

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE HELLENIC REPUBLIC ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

Signed at Athens January 25, 1995

Entered into force November 4, 1995

The Government of the Republic of Korea and the Government of the Hellenic Republic (hereinafter referred to as "the Contracting Parties"),

Desiring to develop economic co-operation between the two States,

Intending to encourage and create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognizing that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investments" shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, and in particular, though not exclusively, include:

- (a) Movable and immovable property and any other property rights such as mortgages, liens and pledges,
- (b) Shares in, stock and debentures of a company and any other form of participation in a company,
- (c) Claims to money or to any performance under contract having an economic value,
- (d) Industrial and intellectual property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets, technical processes and know-how and goodwill,
- (e) Business concessions of economic value necessary for conducting economic activities, conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources; and
- (f) Goods that, under a leasing agreement, are placed at the disposal of a lessee in the territory of a Contracting Party in conformity with its laws and regulations.

Any alteration of the form in which assets are invested shall not affect their character as investments, provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.

2. "Returns" shall mean the amounts yielded by an investment, and in particular, though not exclusively, shall include profits, interests, capital gains, dividends, royalties and fees.

3. "Investors" shall comprise, with regard to either Contracting Party;

- (a) Natural persons having the nationality of that Contracting Party in accordance with its laws, and
- (b) Legal persons constituted in accordance with the laws of that Contracting Party and having their principal place of business within its territory.

4. "Territory" shall mean the territory of the Republic of Korea and the territory of the Hellenic Republic respectively, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea of the Contracting Party over which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and encourage within its territory investments made by investors of the other Contracting Party, create favourable conditions for investors of the other Contracting Party for investments, and shall admit such investments in accordance with its rules and regulations.

2. Investments made by investors of each Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall not impair the management, maintenance, use, enjoyment or disposal, in its territory, of investments by investors of the other Contracting Party, by unjustifiable or discriminatory measures.

3. Returns from the investments and, in cases of reinvestment, the income ensuing therefrom enjoy the same protection as the initial investments.

Article 3. National and Most-favoured Nation-treatment

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than that which the latter Contracting Party accords to the investments and returns of its own investors or investors of any third State, whichever is more favourable.

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments and the returns therefrom, treatment which is fair and equitable and not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future regional economic integration organisation, free trade area, customs union, common market or other similar international Agreements, as well as other forms of regional economic cooperation to which either of the Contracting Parties is or may become a member, and

(b) Any international Agreement or Arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation

1. Investments made by investors of one Contracting Party shall not be nationalised, expropriated or subjected to measures having effect tantamount to nationalisation or expropriation, hereinafter referred to as "expropriation", in the territory of the other Contracting Party, except for a public purpose and on a non-discriminatory basis in accordance with legal procedures and against compensation.

2. Such compensation shall amount to the market value of the expropriated investments immediately before the expropriation or before the impending expropriation become public knowledge, shall include interest from the date of expropriation, and shall be prompt, effective, adequate and freely transferable in convertible currency.

3. The investor whose investments are expropriated shall have the right under the law of the expropriating Contracting Party to prompt review, by a judicial or other competent authority of that Contracting Party, of his case and of the valuation of his investments in accordance with the principles set out in this Article.

4. Where a Contracting Party expropriates the assets of a company which is constituted under the law in force in its territory and in which investors of the other Contracting Party own shares, the provisions of this Article shall be applied.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or other exceptional situations, including losses occasioned by

requisitioning, in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable. Resulting payments shall be made without delay and be freely transferable in convertible currency.

Article 6. Repatriation of Investment and Returns

1 . Each Contracting Party shall guarantee, to the investors of the other Contracting Party, the unrestricted transfer of the investment and its returns.

The transfers shall be effected, without delay, in a freely convertible currency at the bank rate of exchange applicable on the date of transfer.

2 . Such transfers include in particular, though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment,
- b) Profits, interests, dividends and other current income,
- c) Funds in repayment of loans,
- d) Royalties and fees; and
- e) Proceeds of sale or liquidation of the whole or any part of the investment.

Article 7. Subrogation

1 . If a Contracting Party or its designated agency makes a payment to the investor of that Contracting Party under an indemnity it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (a) That any right or claim of the investor is assigned to the former Contracting Party or its designated agency whether under law or pursuant to a legal transaction, and
- (b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims to the same extent as its predecessor in title.

2 . Any payment received by the former Contracting Party or its designated agency in pursuance of the rights and claims acquired shall be freely transferable.

Article 8. Disputes between the Contracting Parties

1 . Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, if possible, be settled by negotiations through diplomatic channels.

2 . If a dispute between the Contracting Parties cannot be settled within six (6) months after the beginning of negotiations, it shall, upon request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal.

3 . Such an Arbitral Tribunal shall be constituted for each individual case in the following way:

Within three (3) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. The appointed members shall then select a national of a third State, who on the approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other members.

4 . If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make such appointments. If the President is a national of either Contracting Party, or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party, or if he is also prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5 . The Arbitral Tribunal shall determine its own procedures.

6 . The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

7 . Each Contracting Party shall bear the cost of its own member of the Tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be final and binding on both Contracting Parties.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

1 . Any dispute, including disputes concerning the expropriation or nationalisation of investments, between either Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled by the disputing parties in an amicable way.

2 . The legal remedies under the laws and regulations of the Contracting Party in the territory of which the investment has been made shall be available for the investor of the other Contracting Party on the basis of treatment no less favourable than that accorded to investments of its own investors or investors of any third State, whichever is more favourable to the investor.

3 . If any dispute cannot be settled within six (6) months from the date either party requested amicable settlement, each Contracting Party hereby consents to its submission to the International Centre for Settlement of Investment Disputes, for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965. If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

Article 10. Application of other Rules

1 . If any provisions of law of either Contracting Party or obligations under international law between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling Investments by investors of the other Contracting Party to a treatment more favourable than is accorded by this Agreement, such regulation shall, in case it is more favourable, prevail over this Agreement.

2 . Each Contracting Party shall observe, in addition to this Agreement, any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 11. Application

The Agreement shall apply to all investments, made prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which was finally settled before its entry into force.

Article 12. Final Clauses

1 . This Agreement shall enter into force thirty (30) days after the date when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.

2 . This Agreement shall remain in force for a period of ten (10) years and continue in force thereafter unless either Contracting Party notifies in writing one year in advance of its intention to terminate this Agreement.

3 . With respect to investments made prior to the date of termination, the provisions of Articles 1 to 11 shall remain in force for a further period of ten (10) years.

4 . This Agreement may be revised by mutual consent.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Athens on the 25th day of January 1995, in the Korean, Greek and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

Lee Seung-hwan

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC

K. Papoulias